

# **EXHIBIT B**

IN THE STATE COURT OF BIBB COUNTY  
STATE OF GEORGIA

LESTER E. KIRKLAND, JR.,

Plaintiff,

vs.

NORFOLK SOUTHERN RAILWAY  
COMPANY,

Defendant.

CIVIL ACTION  
NO. 45273

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STATE COURT OF  
BIBB COUNTY, GEORGIA  
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**ORDER GRANTING DEFENDANT'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
AS TO COUNT III OF PLAINTIFF'S COMPLAINT**

Defendant Norfolk Southern Railway Company filed a Motion for Partial Summary Judgment as to Count III of Plaintiff's Complaint alleging a violation of the Safety Appliance Act on July 31, 2000. Defendant filed its Statement of Undisputed Material Facts and Brief in Support of its Motion. Plaintiff has not responded to Defendant's Motion, and the time within which a response would have been due, had one been intended, has now elapsed, so Defendant's Motion for Partial Summary Judgment is properly before the Court for consideration.

While Plaintiff's Complaint alleges an FELA violation, the facts of Plaintiff's allegations, as summarized in Defendant's Brief and Statement of Undisputed Facts, do not demonstrate a violation of the Safety Appliance Act. In accord with the decisions cited in Defendant's Brief, I find that while these facts may constitute an FELA violation, the presence of a foreign substance on the car is not an area covered by the Safety Appliance

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Act. Therefore, Defendant's Motion for Partial Summary Judgment as to Count III of Plaintiff's Complaint is hereby granted and that Count is dismissed from the case.

IT IS SO ORDERED, this 16 day of October, 2000.

  
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Judge, State Court of Bibb County

PREPARED AND PRESENTED BY:

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